IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 760 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANILBHAI DEVJIBHAI VEGDA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 760 of 1993
MR JITEN M BUDDHBHATTI for Petitioner No. 1
MR HH PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. This appeal has been filed by the appellant u/S. 374 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.') challenging his conviction u/S. 302 of the Indian Penal Code (for short 'IPC') and u/S. 135 of the Bombay Police Act recorded by the Ld. Addl. City Sessions Judge, Court No. 6, Ahmedabad in Sessions Case No. 334 of 1992 on 24/5/1993. The appellant has been sentenced to suffer imprisonment for life for committing offence u/S. 302 of the IPC and SI for one month for committing offence u/S. 135 of the Bombay Police Act. Both the sentences are ordered to run concurrently.

2. Case of the prosecution can be stated in short as under :-

2.1. The unfortunate incident took place on 8/6/1992 wherein one brother got killed at the hands of other. The incident took place in area known as Soni Chawl, Raipur Darwaja in the city of Ahmedabad at about 7.30 p.m. Deceased Navinchandra Devajibhai resided in house no. 584/8/3 in the aforesaid locality with his wife and children. He was working in Sahyog Textile Mills in first shift. His working hours were from 7.00 a.m. to. 3.30 p.m. He had a younger brother named Anilbhai, who is the present appellant, prior to the present incident stayed with the family of the deceased, two months prior for about one month and thereafter he got separated.

2.2. On the day of incident at about 7.30 p.m. the deceased after having bath was lighting a lamp meant for worshiping God and after that he and his family members were about to take meals. At that time all of a sudden the appellant came on the upper floor of the house of the deceased and he started quarreling with the deceased on the ground that why he was not allowing him to stay in that house. He also used very rough language and started talking in insulting manner with the deceased. The deceased, therefore, tried to persuade him by saying that he had never said no to the appellant for staying in the house and it was the appellant who had left the house on his own. On hearing this, the appellant got excited and started uttering filthy abuses. Since the family members were present, the deceased asked the appellant to behave in proper manner and to use decent language. However, the appellant not only ignored the request of the deceased, but he started giving push to the deceased. This resulted into grappling between the two. In the process of grappling with each other, the deceased as

well as the appellant climbed down the staircase and went out of the house and they continued to fight in the open space on the front of the house. The appellant brought out a knife and gave three blows to the deceased, one on the bicets of left hand, the second on the left side back and the third one on the right hand side body of the deceased. Since the family members of the deceased raised shouts for help, people gathered there and on seeing them the appellant ran away from the place carrying the knife with him.

2.3. Since the deceased was seriously injured and he was bleeding profusedly, his wife Dahiben immediately fetched auto rickshaw and she alongwith his brother Dhanajibhai Laxmanbhai and great grand father-in-law Shankarbhai Kuberbhai carried the deceased in rickshaw to the hospital. One Gorabhai Khodabhai, a resident of the locality also went with them to the hospital. The injured was admitted in the L.G. hospital in trauma ward in unconscious condition. He died shortly after the admission in the hospital during the treatment. At the hospital initially Head Constable Shantilal Punambhai, who at the relevant time was attached to the Vatva police station and on the day of incident he was assigned duty at the L.G. Hospital came to know about the deceased being brought in injured condition to the trauma ward and, therefore, it being a medicolegal case, he gathered the information and immediately he transmitted to the P.S.O. Mr. Mishra after recording the same in his own Varthi book. At the Kagdapith Police Station, P.S.O. Head Constable Mr. Kaushikkumar Mishra received this information from Shantilal and he got it recorded in his police station Varthi book. Mr. Mishra thereafter informed P.S.I. Mr. Parmar of investigation squad to go to the hospital and record the complaint. P.S.I. Harkhabhai Khodabhai Parmar on receiving the instruction from the P.S.O. proceeded to the hospital and visited the trauma ward where the injured was undergoing the treatment. He contacted the Medical officer on duty for gathering the facts, but at that time the Medical Officer informed him that the injured has already succumbed to his injuries. In the meanwhile Shantilal again passed on information from the hospital to the P.S.O. Mr. Mishra of Kagdapith Police Station regarding the death of injured Navinchandra which was also duly recorded by the P.S.O. in his Varthi book. At the hospital Harkhabhai on inquiry found that the wife of deceased Navinchandra was very much present and, therefore, he contacted her and after interrogation he recorded her complaint and after observing all the necessary formalities and obtaining signatures, etc., forwarded it alongwith his

report to Kagdapith Police Station with his constable. He thereafter proceeded to get the inquest panchnama drawn in the presence of panchas and also arranged to send the dead body of Navinchandra for post mortem examination to the Civil Hospital, Ahmedabad. Harkhabhai further seized the blood stained handkerchief, sari, etc. under panchnama and considering the seriousness of the offence the further investigation in the matter was taken over by P.I. Mr. Gohil of Kagdapith Police Station. P.I. in the course of the investigation recorded statements of various persons conversant with the facts of the case, got the various panchnamas drawn, obtained the report of Forensic Science Laboratory regarding the blood group of the deceased and after completing the same, he submitted chargesheet in the Court of learned concerned Magistrate, who in turn committed the case to the Court of Sessions as offence u/S. 302 of the IPC is exclusively triable by the Court of Sessions.

3. At the trial, the Ld. Principal Judge, City Sessions Court, Ahmedabad, framed charge against the appellant on 15/2/1993 for offences made punishable u/Ss. 302, 294-A and 504 of the IPC as well as for offence made punishable u/S. 135 (1) of the Bombay Police Act. Charge was read over and explained to the appellant who denied the same and claimed to be tried.

3.1. During the course of the trial the prosecution examined 14 witnesses and also relied on certain documentary evidence in support of tis case. Upon completion of the recording of the oral evidence, the appellant u/S. 313 of the Cr.P.C. was put all the circumstances appearing against him in the evidence with a view to enable him to render any explanation, if he so desired. It, however, appears that no specific case was pleaded by him and his defence appeared to be that of general denial.

4. On completion of the trial, the Ld. trial Judge came to the conclusion that the deceased had died homicidal death; that the prosecution had proved beyond any reasonable doubt that it was the appellant who had caused death of the deceased by inflicting fatal injuries by means of knife to him on 8/6/1992 at about 7.30 p.m. near his house. He, therefore, convicted the appellant for offence made punishable u/S. 302 of the IPC and also for offence u/S. 135 of the Bombay Police Act and imposed the sentence already stated above.

5. At the hearing of this appeal Mr. Jiten M. Budhdhbhatti, the Ld. Counsel for the appellant did not

seriously challenge the involvement of the appellant in the crime, but at the same time he vehemently urged that considering the evidence on record, the order of conviction recorded by the trial Court for offence u/S. 302 of the IPC is erroneous and it is required to be quashed. According to Mr. Budhdhbhatti, on the day of the incident admittedly both the deceased as well as the appellant were engaged in grappling with each other on the first floor of the house of the deceased and in the process of grappling they even tumbled down the staircase and came in the open space in front of the house. Even at that point the physical fight between the two was going on when the appellant inflicted injuries with knife on the deceased which unfortunately resulted into his death. He has, therefore, submitted that in light of these facts, the case of the appellant would squarely fall within the four corners of Exception 4 to Section 300 of the IPC. He has lastly submitted that the appellant has already remained in prison for about 11 years and hence the Court may alter his conviction from one u/S. 302 of the IPC to that u/S. 304 Part-I or Part-II of the IPC and sentence him to suffer imprisonment already undergone.

5. As against that Mr. H.H. Patel, Ld. APP for the respondent State has supported the judgment of the trial Court and he has submitted that considering the evidence on record, this is a fit case wherein conviction u/S. 302 of the IPC should be recorded and the trial Court has, therefore, not committed any error on that count. He has submitted that this appeal has no merits and it deserves to be dismissed.

5.1. Both the counsels have taken us through the record of the case and have placed reliance on various parts of the oral evidence in support of their contentions. We have also carefully scrutinised the evidence with a view to appreciate it afresh.

6. With a view to establish that the deceased had died homicidal death, the prosecution has examined Dr. Nayankumar Natvarlal Parikh P.W.9 Exh. 29. This witness has stated that on 9/6/1992 he was working as Tutor in Forensic Medicine Department of B.J. Medical College and as a part of his duty he was required to carry out post mortem examination. On that day in the morning of about 9.00 a.m. he had received a dead body from P.S.I. Kagdapith Police Station for performing its post mortem examination. The said body was of one Navinchandra Devajibhai Vankar. He alongwith Dr. H.G. Palekar commenced the post mortem of the dead body at about 9.20

a.m. and completed the same at 11.00 a.m. During the post mortem examination the witness has noticed 4 external injuries on the body of deceased Navinchandra which have been duly recorded in column no. 17 of the post mortem notes. The post mortem notes have been produced on record by consent and they have been given Exh. No. 13. In column no. 17 this witness has noted that the deceased had suffered -

(1) injury on the left hand shoulder of 2.2 x 0.6 cm. It was a punctured wound and the edges thereof were stained with blood.

(2) On the right side of the stomach there was a pointed wound admeasuring about 2.2 x 1 cm. and the edges of the wound were blood stained.

(3) There was an abrasion on the right side of the neck admeasuring 0.2 x 0.4 cm. and

(4) On the left hand shoulder there was one puncture wound of the size of 1 x 0.2 cm.

In his opinion all these injuries were antemortem. He has further stated that external injury no. 2 had corresponded with internal injury which showed that the weapon had cut through the skin, muscle and even the peritoneum and lever. In his opinion, the death was due to blood loss on account of the injuries stated above. According to him, injury no. 2 was sufficient in ordinary course of nature to cause death. He has further stated that injuries nos. 1, 2 and 4 could have been caused by sharp cutting instrument. This witness has not been cross-examined at all by the defence.

6.2. The aforesaid evidence of the Medical officer clearly shows that the deceased had died homicidal death and not a natural death. To that extent we totally agree with the Ld. trial Court.

7. With a view to establish the fact that it was the appellant who had caused these injuries, the prosecution has examined Dahiben Navinchandra, the widow of the deceased Navinchandra as P.W.1 at Exh. 17. She has stated in her evidence that on the day of incident while deceased was offering Pooja by lighting lamp, the appellant came there and he picked up quarrel with the deceased on the ground that why he did not allow him to stay in the house and though the deceased tried to persuade the appellant by saying that he had not driven him away, but he (the appellant) himself had separated from the family with a view to reside elsewhere. This, however, resulted initially into hot exchange of words and thereafter in physical fight between the two. The witness has stated that in the process of grappling with

each other, both of them came down in front of the house and continued to fight in the open space. The appellant at that time gave knife blows to the deceased, as a result of which he fell down. On seeing the deceased in injured condition, this witness raised shouts and immediately went to get the rickshaw. On arrival of the rickshaw this witness alongwith her brother and great grand-father-in-law and one Gorabhai took the deceased in injured condition to the L.G. hospital and got him admitted in trauma ward, where during treatment he died. In the cross-examination by the defence she has admitted that prior to about 2 months from the date of incident, the appellant had stayed with them for about a month, but he had thereafter separated on his own accord. She has further stated that when the appellant came in the evening he was in agitated mood and immediately started behaving in unruly fashion and used filthy language. She has further stated that both these persons during their fight had become desperate and the fight had lasted for about 10 to 15 minutes. She had tried to intervene and separate them, but she could not succeed. In the cross-examination she has further stated that when the appellant and deceased went down stairs she stood in the gallery, but it was only when she came down she has seen the appellant inflicting knife blows on her husband. She has stated that when she came down she found that her husband was lying on the road in profuse bleeding condition. She has further stated that while she was standing in the gallery she heard the shout and, therefore, she went out and she could witness atleast one blow with knife being given to her husband by the appellant.

7.1. The second witness on this aspect is Dhanajibhai Laxmanbhai Valera P.W. 2 Exh. 19, who has also deposed on the same line and in the cross-examination of this witness defence has not been able to elicit any material which could discredit story of the prosecution.

7.2. The third eye witness examined by the prosecution, namely Gorabhai Khodabhai P.W.8 Exh. 28 has chosen not to support prosecution and he has been declared hostile. Hence, there is no point in discussing his evidence here.

7.3. Apart from these three witnesses, the prosecution has also examined various witnesses who have acted as panchas to different panchnamas. All these witnesses have also not supported the prosecution and they have been declared hostile.

7.4. Lastly, prosecution has examined police witnesses with a view to bring on record the course of investigation in this case. Shantilal Punambhai P.W. 10 Exh. 32, who at the relevant point of time discharged duty at the L.G. Hospital and on receiving information regarding present incident he transmitted to Kagdapith Police Station where it was received by P.S.O. Mr. Mishra, who in turn directed the P.S.I. to visit the hospital and to record the necessary information. Pursuant to this instruction, Harkhabhai Parmar of Kagdapith Police Station recorded the complaint of the widow of the deceased and also drew the inquest panchnama, etc. He thereafter handed over investigation to Rajubha Jorubha Gohil. In the examination-in-chief he has narrated the course of investigation adopted by him and in the cross-examination by the defence, it has not been able to bring out any material adverse to the prosecution case. Since Mr. Budhdhbhatti has not seriously challenged the involvement of the appellant, we do not discuss the evidence of all these witnesses in detail.

8. The next question that would arise is what offence the appellant has committed. Mr. Budhdhbhatti has placed heavy reliance on the provisions of Exception 4 to Section 300 of the IPC and has submitted that since the question of inflicting knife blows has arisen as a result of sudden fight and the appellant, in heat of passion, has inflicted these blows, the case would be covered under this exception. We are, however, not convinced on that issue because considering the medical evidence on record, it is very clear that the deceased has suffered as many as four injuries out of which three are stab wounds. In the opinion of the Medical Officer, the injuries had caused sufficient blood loss so as to put the life of the deceased in danger. In fact in his opinion, this blood loss has resulted into shock and the deceased had died due to shock and hemorrhage on account of the injuries suffered by him. He has also stated that so far injury no. 2 as shown in column no. 17 of the post mortem notes is concerned, it was sufficient in ordinary course of nature to cause death. Coupled with this aspect it is also the case of the prosecution and in our opinion it is duly established that it was the appellant who went to the house of the deceased and immediately picked up the quarrel which no-doubt resulted into physical fight between the both and during the course of the same, the appellant caused aforesaid injuries to the deceased. Meaning thereby that the appellant had already carried knife with him, which he used in causing fatal injuries to the deceased. It is no

ones case that appellant by chance got the knife and in heat of passion used it. Over and above this, considering the fact that the deceased was totally unarmed and taking the undue advantage of his helpless position, the appellant inflicted the aforesaid blows. To sum up the question, whether the case of appellant falls within the purview of Exception 4 to Section 300 of the IPC it can be said that though there is sudden fight, the other ingredients of the said exception are wanting in this case. From the prosecution evidence, it becomes very clear that the appellant had come all prepared for this eventuality by carrying knife with him and not only that but he had taken disadvantage of the helpless position of the deceased, he being unarmed at the time of physical fight between them and by inflicting more than one blow, he had acted in a cruel manner. There is, therefore, no question of granting him any benefit under Exception 4 to Section 300 of the IPC. In our opinion, the conviction recorded by the trial Court for offence u/S. 302 of the IPC is proper and it does not need any interference at our hands. The appeal has, therefore, no merits and it deserves to be dismissed. The appeal is, therefore, ordered to be dismissed.

Muddamal articles to be disposed of in terms of the direction given by the Ld. trial Judge in the impugned judgment.

[K.R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.